Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1244428 B.C. Ltd. dba Vanpro Disposal 2020 v. Enpin Wonton Restaurant Ltd.*, 2022 BCCRT 92

B E T W E E N :

1244428 B.C. LTD. DBA VANPRO DISPOSAL 2020

APPLICANT

A N D :

ENPIN WONTON RESTAURANT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. The applicant 1244428 B.C. Ltd. dba Vanpro Disposal 2020 (Vanpro 2020) is a waste removal company. The respondent Enpin Wonton Restaurant Ltd. (Enpin) hired Vanpro 2020's predecessor company for garbage and recycling removal at its restaurant. Vanpro 2020 says that Enpin terminated their waste removal contract in

April 2021 and owes it $2,497.71 in garbage removal fees, $204.75 for a bin removal, and $2,356.33 in liquidated damages, plus contractual interest. Vanpro 2020 has abandoned its claims over the Civil Resolution Tribunal's (CRT) $5,000 monetary limit for small claims.

2. Enpin says that Vanpro 2020 did not pick up its waste regularly, as their contract required. Enpin also says that its owner, who signed the contract, did not understand the contract's termination clause because they could not read English. Enpin says that it owes Vanpro 2020 nothing.

3. Vanpro 2020 is represented by an employee. Enpin is represented by its owner's relative.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

6. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

8. I note that Vanpro 2020 uploaded a screenshot of the CRT's online evidence submission portal, showing that it had difficulty uploading an image. The date of the evidence is filled out as January 27, 2015, which is the date Enpin signed a contract with Vanpro 2020's predecessor company. This contract is in Vanpro 2020's evidence. In any event, Vanpro 2020 does not say anything in its submissions about being unable to upload evidence in its submissions. So, I find that Vanpro 2020 was ultimately able to upload all the evidence it intended to upload.

9. As mentioned above, Vanpro 2020 claims more than the CRT's $5,000 monetary jurisdiction. The CRT's online dispute resolution software does not allow parties to enter claims that total more than $5,000, so Vanpro 2020 reduced its liquidated damages claim on its Dispute Notice to $2,297.54. However, in the body of the Dispute Notice, Vanpro 2020 said that its liquidated damages were $2,356.33.

10. In *Klondike Contracting Corporation v. Abadian*, 2021 BCPC 145, the court found that a claimant could call evidence of damages above the BC Provincial Court's $35,000 monetary limit even though the court could not order more than that amount. I find that the same principle applies here. I find that CRTA, which has the same language as the *Small Claims Act*, does not prevent a party from providing evidence about debt or damages above $5,000. It only prevents the CRT from ordering payment of over $5,000.

11. In general, the CRT will not consider claims for more money than what the applicant put in the Dispute Notice. This is because it would be procedurally unfair to

respondents to consider claims that are not in the Dispute Notice. In this dispute, I find that Vanpro 2020 only "deducted" some its liquidated damages claim because the CRT's online forms forced it to do so. Because the Dispute Notice specifically alleged that Vanpro 2020's liquidated damages were $2,356.33, I find that Enpin knew that Vanpro 2020 would argue for this amount. With that, I find that Vanpro 2020's claim for $2,356.33 in liquidated damages is properly before me.

ISSUES

12. The issues in this dispute are:

    a. Did Enpin agree to the termination clause in the parties' contract?

    b. Did Enpin breach the parties' contract by terminating the contract?

    c. If so, how much, if anything, does Enpin owe Vanpro 2020?

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Vanpro 2020 as the applicant must prove its case on a balance of probabilities, meaning "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

14. Enpin operates a restaurant. It signed a waste disposal agreement with Housewise Construction Ltd. dba Segal Disposal on January 27, 2015, for a 1-year term. The contract automatically renewed for a 5-year term. The contract allowed for Housewise to suspend Enpin's service if its account was overdue. The contract said that Enpin was still responsible for the monthly fee during a suspension period.

15. The contract also allowed Housewise to assign the contract without needing Enpin's consent. On February 1, 2018, Housewise assigned the contract to 0955824 B.C. Ltd. dba Vanpro Disposal (Vanpro Disposal). I find that after this assignment, the 2015 contract became a contract between Enpin and Vanpro Disposal.

16. Enpin says that it shut down in March 2020 due to the COVID-19 pandemic. Enpin says that when it reopened in June 2020, it noticed that garbage had accumulated since March 2020. Enpin therefore says that Vanpro Disposal must not have picked up its waste during this time. However, Enpin also says that it did not dispose of any garbage during this time, which I find inconsistent with its allegation that garbage had accumulated.

17. Vanpro 2020 says that Vanpro Disposal continued servicing Enpin's premises between March and June 2020 and that there was garbage in the bins. Vanpro 2020 provided driver records for this time period, which say that it picked up garbage every 2 weeks. I find that Vanpro Disposal continued picking up Enpin's garbage between March and June 2020.

18. It is undisputed that Enpin's account was up to date as of January 2020, but that it stopped paying Vanpro Disposal in February 2020. On July 25, 2020, Vanpro Disposal wrote Enpin that its account was "seriously overdue". Vanpro Disposal said that it would suspend service on August 1, 2020, which Vanpro 2020 says it did.

19. The parties agree that Enpin made a $374.02 payment on August 16, 2020. Enpin says this was to pay for February and June 2020.

20. On November 2, 2020, Enpin signed a new 5-year contract with Vanpro Disposal, effective November 1, 2020. Enpin says that during this meeting, the Vanpro Disposal representative agreed to a reduced rate of $351 for March, April, and May 2020. Enpin says that the Vanpro Disposal representative agreed to this in writing. Vanpro 2020 denies this. The document that allegedly sets out this agreement is in Chinese. Enpin did not provide a translation. I therefore do not accept the document as evidence because the CRT's rules require all evidence to be translated into English. On balance, I find that Enpin has not proven that Vanpro Disposal agreed to retroactively reduce its rate for March to May 2020.

21. On November 23, 2020, Vanpro Disposal wrote to suspend Enpin's service for unpaid fees again, starting December 1, 2020. Enpin had not made a payment since August

16, 2020. Like the previous contract, the new contract said that Vanpro Disposal could continue charging its regular fees during the suspension period.

22. Nothing happened between November 2020 and April 1, 2021, when Enpin paid $351 towards its outstanding balance. Enpin says that it thought that Vanpro Disposal would resume services after receiving this payment, but it did not. So, Enpin asked Vanpro Disposal to pick up the bins. Neither party says what date this was, but I infer from context that it was shortly after April 1, 2021. This is because according to Vanpro 2020's records, it charged Enpin for liquidated damages on April 5, 2021. Vanpro 2020 removed the bins from Enpin's premises in June 2021.

23. The 2020 contract gave Vanpro Disposal the same right of assignment as the 2015 contract. On May 1, 2020, Vanpro Disposal assigned all of its service contracts and accounts receivable to Vanpro 2020. I find that this assignment applied to both the 2020 contract and the 2015 contract.

Did Enpin agree to the termination clause in the parties' contract?

24. Like the 2015 contract, the 2020 contract only allowed Enpin to terminate the agreement during a specific window near the end of its 5-year term. Enpin says that its owner did not understand this term because of a language barrier.

25. When a party signs a contract, they are generally bound by its terms even if they did not read or understand the contract. There are exceptions to this. Enpin's allegation that its owner did not understand the contract because of a language barrier raises a legal doctrine called "*non est factum"*, which says that a contract is not valid if the signing party is mistaken about the nature of the contract. To succeed, the signing party must prove that the contract was fundamentally different from what they believed it was. They also must prove that they took reasonable care to understand the contract before signing it. A person's ability to read and understand English is a relevant factor in this analysis but is not determinative. See *Farrell Estates Ltd. v. Win-Up Restaurant Ltd.*, 2010 BCSC 1752, at paragraphs 100 and 130 to 134.

26. I find that Enpin has not proven that the contract with Vanpro Disposal was fundamentally different from what they thought it was. The only thing Enpin says its owner did not understand was the termination process. This is an important term, but I find that it does not change the contract's fundamental nature. In any event, Enpin does not say what steps its owner took to understand the contract's terms before signing it, such as having it translated. I find that Enpin has not proven that it took reasonable care to understand the contract before signing it. I therefore find that the contract is binding on Enpin including the termination clause.

27. Enpin does not dispute that by asking Vanpro Disposal to pick up the bins, Enpin terminated the contract. Enpin also does not dispute that it terminated the contract outside the permitted window. I therefore find that Enpin breached the contract by asking Vanpro Disposal to pick up the bins.

How much, if anything, does Enpin owe Vanpro 2020?

28. As mentioned above, Vanpro 2020 claims $2,497.71 in garbage removal fees, $204.75 for a bin removal, $2,356.33 in liquidated damages, plus contractual interest. As mentioned above, Vanpro 2020 limited its total claim to $5,000.

29. Starting with the outstanding garbage removal fees, Vanpro Disposal charged Enpin $187.01 per month from February through October 2020, $180 per month for November and December 2020, and $189 per month from January through April 2021. Both the 2015 contract and the 2020 contract provided for periodic fee increases. Other than its allegation that Vanpro Disposal agreed to a reduced rate for March to June 2020, which I have not accepted, Enpin does not dispute the monthly rates Vanpro Disposal charged. Rather, Enpin says that it should not have to pay for services it did not receive.

30. As mentioned above, I find that Vanpro Disposal picked up Enpin's waste from March to June 2020. The driver records also show that it picked up waste in August and November 2020. I find that these service gaps are consistent with Vanpro Disposal's

2 service suspensions. I find that Vanpro Disposal picked up waste between March and August 2020 and in November 2020, but not at other times.

31. I find that Vanpro Disposal was entitled to suspend service in both August and November 2020 because Enpin had not paid its invoices. I also find that the contracts both allowed Vanpro Disposal to continue charging Enpin during the suspension period. I therefore find that Vanpro Disposal was entitled to charge its monthly fee from February 2020 through April 2021, as alleged. Vanpro 2020 does not explain how it calculated its $2,497.71 claim. I find that the contracts required Enpin to pay a total of $2,799.09 between February 2020 and April 2021. Enpin paid $725.02, leaving a total amount owing of $2,074.07. I order Enpin to pay this amount.

32. Turning to the bin removal fee, I find that the 2020 contract allowed Vanpro Disposal to charge a $150 to remove each bin. It charged a $150 fee to remove the garbage bin and $45 fee to remove the compost bin. It says that it gave a discounted rate to remove the compost bin because it was small. I find that Vanpro 2020 has proven that it was entitled to charge $195 to remove the 2 bins, and order Enpin to pay this amount.

33. As for liquidated damages, because Enpin terminated the contract outside of the permitted window, I find that Vanpro Disposal could charge the greater of the balance remaining on the contract or the projected next 12 months of fees. Vanpro Disposal says it is entitled to $2,356.33, which is 12 months at $187.01. Based on the above contractual terms, I find that Vanpro Disposal was entitled to more than this in liquidated damages because there were over 4 years remaining in its 5-year term, but I cannot award more than Vanpro Disposal claimed. So, I find it is entitled to $2,356.33 in liquidated damages.

34. Finally, Vanpro 2020 claims 26.82% annual contractual interest. I find that the 2 contracts both provide for interest on overdue invoices at this rate. I have already ordered Enpin to pay Vanpro 2020 $4,625.40 in damages. The CRT's $5,000 monetary limit includes contractual interest. See *EASYFINANCIAL SERVICES INC. v. Rosvold*, 2019 BCCRT 68, which I agree with. I find that Vanpro 2020's entitlement

to contractual interest is greater than $374.60, which is the maximum I can award. I therefore order Enpin to pay $374.60 in contractual interest.

35. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find Vanpro 2020 is entitled to reimbursement of $175 in CRT fees. Vanpro 2020 did not claim any dispute-related expenses.

ORDERS

36. Within 30 days of the date of this order, I order Enpin to pay Vanpro 2020 a total of $5,175, broken down as follows:

    a. $4,625.40 in damages,

    b. $374.60 in contractual interest, and

    c. $175 for CRT fees.

37. Vanpro 2020 is entitled to post-judgment interest, as applicable.

38. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision.

39. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member